

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 464

BY SENATORS GEFFERT, BALDWIN, BEACH, BROWN,
HAMILTON, JEFFRIES, LINDSAY, STOLLINGS, WOELFEL,
AND PLYMALE

[Introduced January 21, 2022; referred
to the Committee on the Workforce; and then to the
Committee on the Judiciary]

1 A BILL to amend and reenact §21-5-1 of the Code of West Virginia, 1931, as amended, relating
 2 to including independent contractors within the definition of employee; and including
 3 independent contractors as employees of employers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

1 As used in this article:

2 (a) The term “firm” includes any partnership, association, joint-stock company, trust,
 3 division of a corporation, the administrator or executor of the estate of a deceased individual, or
 4 the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

5 (b) The term “employee” or “employees” includes any person suffered or permitted to work
 6 by a person, firm, or corporation, ~~except~~ including those classified as an independent contractor
 7 pursuant to §21-5I-4 of this code.

8 (c) The term “wages” means compensation for labor or services rendered by an employee,
 9 whether the amount is determined on a time, task, piece, commission, or other basis of
 10 calculation. As used in §21-5-4, §21-5-5, §21-5-8a, §21-5-10, and §21-5-12 of this code, the term
 11 “wages” shall also include then accrued fringe benefits capable of calculation and payable directly
 12 to an employee: *Provided*, That nothing herein contained shall require fringe benefits to be
 13 calculated contrary to any agreement between an employer and his or her employees which does
 14 not contradict the provisions of this article.

15 (d) The term “commissioner” means the Commissioner of Labor or his or her designated
 16 representative.

17 (e) The term “railroad company” includes any firm or corporation engaged primarily in the
 18 business of transportation by rail.

19 (f) The term “special agreement” means an arrangement filed with and approved by the
 20 commissioner whereby a person, firm, or corporation is permitted upon a compelling showing of

21 good cause to establish regular paydays less frequently than once every two weeks: *Provided,*
22 That in no event shall the employee be paid in full less frequently than once each calendar month
23 on a regularly established schedule.

24 (g) The term “deductions” includes amounts required by law to be withheld, and amounts
25 authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities,
26 and hospitalization and medical insurance.

27 (h) The term “officer” shall include officers or agents in the management of a corporation
28 or firm who knowingly permit the corporation or firm to violate the provisions of this article.

29 (i) The term “wages due” shall include at least all wages earned up to and including the
30 12th day immediately preceding the regular payday.

31 (j) The term “construction” means the furnishing of work in the fulfillment of a contract for
32 the construction, alteration, decoration, painting, or improvement of a new or existing building,
33 structure, roadway, or pipeline, or any part thereof, or for the alteration, improvement, or
34 development of real property: *Provided,* That construction performed for the owner or lessee of a
35 single-family dwelling or a family farming enterprise is excluded.

36 (k) The term “minerals” means clay, coal, flagstone, gravel, limestone, manganese, sand,
37 sandstone, shale, iron ore, and any other metallurgical ore.

38 (l) The term “fringe benefits” means any benefit provided an employee or group of
39 employees by an employer, or which is required by law, and includes regular vacation, graduated
40 vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses,
41 sickness and accident benefits, and benefits relating to medical and pension coverage.

42 (m) The term “employer” means any person, firm, or corporation employing any employee
43 including a person who has entered into a contract pursuant to §21-5I-4 of this code.

44 (n) The term “doing business in this state” means having employees actively engaged in
45 the intended principal activity of the person, firm, or corporation in West Virginia.

NOTE: The purpose of this bill is to include independent contractors within the definition of employee to receive the same wage and earnings protections and legal remedies.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.